

AMENDED IN SENATE APRIL 20, 2015

SENATE BILL

No. 588

Introduced by Senator De León

February 26, 2015

~~An act to amend Section 2810 of the Labor Code, relating to employment. An act to add Chapter 10 (commencing with Section 690.020) to Division 1 of Title 9 of Part 2 of the Code of Civil Procedure, and to amend Section 98 of, and to add Sections 96.8, 238, 238.1, 238.2, 238.3, 238.4, 238.5, and 558.1 to, the Labor Code, relating to employment.~~

LEGISLATIVE COUNSEL'S DIGEST

SB 588, as amended, De León. ~~Employment.~~ *Employment: nonpayment of wages; Labor Commissioner; judgment enforcement.*

(1) The Enforcement of Judgments Law provides for the enforcement of money judgments and other civil judgments. Under that law, a judgment creditor may levy upon the property of a judgment debtor to satisfy a judgment, and a levying officer holds the property until the final determination of any exemptions claimed by the judgment debtor.

This bill would enact special provisions for the enforcement of judgments against an employer arising from the employer's nonpayment of wages for work performed in this state. The bill would authorize the Labor Commissioner to use any of the existing remedies available to a judgment creditor and to act as a levying officer when enforcing a judgment pursuant to a writ of execution, as provided.

The bill would also authorize the Labor Commissioner to issue a notice of levy, as specified, if the levy is for a deposit, credits, money, or property in the possession or under the control of a bank or savings

and loan association or for an account receivable or other general intangible owed to the judgment debtor by an account debtor.

(2) Existing law authorizes the Labor Commissioner to investigate employee complaints and to provide for a hearing in any action to recover wages, penalties, and other demands for compensation. Existing law requires the Labor Commissioner to determine all matters arising under his or her jurisdiction. Existing law makes any employer or other person acting on behalf of an employer who violates or causes to be violated specified provisions regulating hours and days of work in any order of the Industrial Welfare Commission to be subject to a civil penalty, as specified.

This bill would authorize the Labor Commissioner to provide for a hearing against any employer or other person acting on behalf of an employer for a violation of those provisions regulating hours and days of work in any order of the Industrial Welfare Commission. The bill would also authorize any person liable for a violation of those provisions to be held liable in various other actions relating to, among other things, an employer's failure to pay wages.

Under existing law, within a specified period of time after service of notice of an order, decision, or award, the parties are authorized to seek review by filing an appeal to the superior court, where the appeal is required to be heard *de novo*.

This bill, after a judgment is entered by a court of competent jurisdiction in favor of the Labor Commissioner or in favor of any employee pursuant to an appeal, would authorize the Labor Commissioner to, with the consent of any employee in whose favor the judgment is entered, collect any outstanding amount of the judgment by mailing a notice of levy upon all persons having in their possession, or who will have in their possession or under their control, any credits, money, or property, belonging to the judgment debtor, or who owe any debt to the judgment debtor at the time they receive the notice of levy. The bill would also require the judgment debtor to be served with a copy of the notice of levy. The bill would require any person who surrenders to the commissioner any credits, money, or property, or pays the debts owing the judgment debtor to be discharged from any obligation or liability to the judgment debtor to the extent of the amount paid to the commissioner as a result of the levy. The bill would make any person noticed with a levy who fails or refuses to surrender any credits, money, or property or pay any debts owing to the judgment debtor liable in his or her own person or estate to the commissioner in

an amount equal to the value of the credits, money, or property or in the amount of the levy, as provided.

If a final judgment against an employer arising from the employer's nonpayment of wages for work performed in this state remains unsatisfied after a specified period of time after the time to appeal has expired and no appeal is pending, the bill would prohibit an employer from continuing to conduct business in this state unless the employer has obtained a bond from a surety company admitted and has filed a copy of that bond with the Labor Commissioner, as provided. As an alternative to the bond requirement, the bill would authorize the employer to provide the Labor Commissioner with a notarized copy of an accord reached with an individual holding an unsatisfied final judgment. The bill would make any employer conducting business without satisfying the bond requirement subject to a specified civil fine. The bill, where an employer is conducting business in violation of the bond requirement, would authorize the Labor Commissioner to issue and serve on such employer a stop order prohibiting the use of employee labor by the employer until the employer complies with the bond requirement provided that the stop order would not compromise or imperil public safety or the life, health, and care of vulnerable individuals. The bill would make the failure of an employer, officer, or anyone having direction, management, or control of any place of employment or of employees to observe a stop order guilty of a misdemeanor. By creating a new crime, the bill would impose a state-mandated local program. Subject to required prior notice to the employer, the bill would authorize the Labor Commissioner to create a lien on any real or personal property in California of an employer that is conducting business without satisfying the bond requirement for the full amount of any wages, interest, penalties, and attorney's fees claimed to be owed to an employee.

Existing law generally provides for the licensure and regulation of various types of long-term care facilities by the State Department of Public Health and the State Department of Social Services.

If a final judgment against an employer arising from the employer's nonpayment of wages remains unsatisfied after the time to appeal has expired and there is no pending appeal, this bill would prohibit an employer in the long-term care industry, as specified, from obtaining a license or renewing that license if the employer is conducting business without obtaining a bond or reaching an accord with an individual holding an unsatisfied judgment, as described above. The bill would

make a specified entity that contracts with an employer to perform services in the property services, as defined, or long-term care industries jointly and severally liable where the entity has been named as a defendant with the employer for any unpaid wages and the employer was found liable for those unpaid wages pursuant to a specified action, as provided.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

~~Existing law prohibits a person or entity from entering into a contract or agreement for labor or services with specified types of contractors if the person or entity knows or should know that the contract or agreement does not include funds sufficient to allow the contractor to comply with all applicable local, state, and federal laws or regulations governing the labor or services to be provided, and provides there is a rebuttable presumption affecting the burden of proof that there has been no violation of this provision if the contract or agreement meets specified requirements.~~

~~This bill would make nonsubstantive changes to these provisions.~~

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~ yes.
State-mandated local program: ~~no~~ yes.

The people of the State of California do enact as follows:

1 *SECTION 1. Chapter 10 (commencing with Section 690.020)*
2 *is added to Division 1 of Title 9 of Part 2 of the Code of Civil*
3 *Procedure, to read:*

4
5 *CHAPTER 10. ENFORCEMENT OF JUDGMENTS BY LABOR*
6 *COMMISSIONER*

7
8 690.020. *For the purpose of the remedies provided under this*
9 *chapter, jurisdiction is conferred upon the superior court.*

10 690.030. (a) *Except as otherwise provided by statute, whenever*
11 *a warrant or notice of levy may properly be issued by the Labor*
12 *Commissioner pursuant to Section 96.8 of the Labor Code, and*
13 *the warrant may be levied with the same effect as a levy pursuant*

1 to a writ of execution, the commissioner may use any of the
2 remedies available to a judgment creditor, including, but not
3 limited to, those provided in Chapter 6 (commencing with Section
4 708.010) of Division 2.

5 (b) The proper court for the enforcement of the remedies
6 provided under this chapter is the superior court of any of the
7 following counties:

8 (1) The county where the employee resides.

9 (2) The county where the judgment debtor resides.

10 (3) The county where the person against whom the levy or
11 warrant was issued resides.

12 690.040. (a) Whenever the Labor Commissioner, pursuant to
13 Section 96.8 of the Labor Code, levies upon property pursuant to
14 a warrant or notice of levy for the collection of an unsatisfied
15 judgment or award:

16 (1) If the debtor is a natural person, the debtor is entitled to the
17 same exemptions to which a judgment debtor is entitled. Except
18 as provided in subdivisions (b) and (c), the claim of exemption
19 shall be made, heard, and determined as provided in Chapter 4
20 (commencing with Section 703.010) of Division 2 in the same
21 manner as if the property were levied upon under a writ of
22 execution.

23 (2) A third person may claim ownership or the right to
24 possession of the property or a security interest in or lien on the
25 property. Except as provided in subdivisions (b) and (c) or as
26 otherwise provided by statute, the third-party claim shall be made,
27 heard, and determined as provided in Division 4 (commencing
28 with Section 720.010) in the same manner as if the property were
29 levied upon under a writ of execution.

30 (b) In the case of a warrant or notice of levy issued pursuant to
31 Section 96.8 of the Labor Code, the claim of exemption or the
32 third-party claim shall be filed with the Labor Commissioner.

33 (c) A claim of exemption or a third-party claim pursuant to this
34 section shall be heard and determined in a superior court specified
35 in subdivision (b) of Section 690.030.

36 690.050. (a) Notwithstanding any other law, in the case of a
37 writ of execution issued by a court of competent jurisdiction
38 pursuant to Chapter 3 (commencing with Section 699.010) and
39 Chapter 5 (commencing with Section 706.010) of Division 2, the
40 Labor Commissioner, when collecting an unsatisfied judgment or

1 *award pursuant to Section 96.8 of the Labor Code, may perform*
2 *the duties of the levying officer, except that the commissioner need*
3 *not give himself or herself the notices that the levying officer is*
4 *required to serve on a judgment creditor or the notices that a*
5 *judgment creditor is required to give to the levying officer.*

6 *(b) Notwithstanding subdivision (a) of Section 700.140 and*
7 *Section 700.170, if the levy is for a deposit, credits, money, or*
8 *property in the possession or under the control of a bank or savings*
9 *and loan association or for an account receivable or other general*
10 *intangible owed to the judgment debtor by an account debtor, the*
11 *commissioner may deliver or mail a notice of levy to a centralized*
12 *location designated by the bank or savings and loan association*
13 *or, in the case of an account receivable or other general intangible,*
14 *to the agent for service of process of the account debtor. If the*
15 *notice of levy is received at the designated central location for the*
16 *bank or savings and loan association, it will apply to all deposits,*
17 *credits, money, and personal property held by the bank or savings*
18 *and loan association regardless of the location of that property.*
19 *The notice of levy may be issued directly by the commissioner,*
20 *whether or not a court has issued a writ of execution, and shall*
21 *contain all of the information required to be included in a writ of*
22 *execution under Section 699.520 and in a notice of levy under*
23 *Section 699.540.*

24 *SEC. 2. Section 96.8 is added to the Labor Code, to read:*

25 *96.8. (a) Notwithstanding any other law, after a judgment is*
26 *entered by a court of competent jurisdiction in favor of the Labor*
27 *Commissioner or in favor of any employee pursuant to Section*
28 *98.2, the Labor Commissioner may, with the consent of any*
29 *employee in whose favor the judgment is entered, collect any*
30 *outstanding amount of the judgment by mailing a notice of levy*
31 *upon all persons having in their possession, or who will have in*
32 *their possession or under their control, any credits, money, or*
33 *property belonging to the judgment debtor, or who owe any debt*
34 *to the judgment debtor at the time they receive the notice of levy.*

35 *(b) Notwithstanding any other law, the Labor Commissioner*
36 *may execute a levy on any property that may be levied under*
37 *Section 700.140 or 700.170 of the Code of Civil Procedure by*
38 *mailing a notice of levy to the person against whom the levy is*
39 *directed and serving a copy on the judgment debtor. The notice of*
40 *levy shall contain all of the information required to be included*

1 *in a writ of execution under Section 699.520 of the Code of Civil*
2 *Procedure and in a notice of levy under Section 699.540 of the*
3 *Code of Civil Procedure.*

4 *(c) Any person, upon whom a levy has been noticed having in*
5 *his or her possession or under his or her control any credits,*
6 *money, or property belonging to the judgment or owing any debts*
7 *to the judgment debtor at the time of receipt of the levy or coming*
8 *into his or her possession or under his or her control within one*
9 *year of receipt of the notice of levy, shall surrender the credits,*
10 *money, or property to the commissioner or pay to the commissioner*
11 *the amount of any debt owing the judgment debtor within 10 days*
12 *of service of the levy, and shall surrender the credits or property,*
13 *or the amount of any debt owing to the judgment debtor coming*
14 *into his or her own possession or control within one year of receipt*
15 *of the notice of levy within 10 days of the date of coming into*
16 *possession or control of the credits or property or the amount of*
17 *any debt owing to the judgment debtor.*

18 *(d) Any person who surrenders to the commissioner pursuant*
19 *to this section any credits, money, or property, or pays the debts*
20 *owing the judgment debtor, shall be discharged from any obligation*
21 *or liability to the judgment debtor to the extent of the amount paid*
22 *to the commissioner as a result of the levy.*

23 *(e) If the levy is made on a deposit or credits, money, or property*
24 *in the possession or under the control of a bank, savings and loan*
25 *association, or other financial institution as defined by Section*
26 *669a(d)(1) of Title 42 of the United States Code, the notice of levy*
27 *may be delivered or mailed to a centralized location designated*
28 *by the bank, savings and loan association, or other financial*
29 *institution pursuant to Section 690.050 of the Code of Civil*
30 *Procedure.*

31 *(f) Any person who is noticed with a levy pursuant to this section*
32 *and who fails or refuses to surrender any credits, money, or*
33 *property or pay any debts owing to the judgment debtor shall be*
34 *liable in his or her own person or estate to the commissioner in*
35 *an amount equal to the value of the credits, money, or other*
36 *property or in the amount of the levy, up to the amount specified*
37 *in the levy.*

38 *(g) The fees, commissions, expenses, and the reasonable costs*
39 *associated with the sale of property levied upon by warrant or levy*
40 *pursuant to this section, including, but not limited to, appraisers'*

1 *fees, auctioneers' fees, and advertising fees are an obligation of*
2 *the judgment debtor and may be collected from the judgment debtor*
3 *by virtue of the warrant or levy or in any other manner as though*
4 *these items were part of the judgment or award outstanding.*

5 *(h) This section shall not apply to the judgment debtor's interest*
6 *in real property.*

7 *SEC. 3. Section 98 of the Labor Code is amended to read:*

8 98. (a) The Labor Commissioner is authorized to investigate
9 employee complaints. The Labor Commissioner may provide for
10 a hearing in any action to recover wages, penalties, and other
11 demands for compensation, including liquidated damages if the
12 complaint alleges payment of a wage less than the minimum wage
13 fixed by an order of the Industrial Welfare Commission or by
14 statute, properly before the division or the Labor Commissioner,
15 including orders of the Industrial Welfare Commission, and shall
16 determine all matters arising under his or her jurisdiction. *The*
17 *Labor Commissioner may also provide for a hearing against any*
18 *employer or other person acting on behalf of an employer for a*
19 *violation of Section 558.* It is within the jurisdiction of the Labor
20 Commissioner to accept and determine claims from holders of
21 payroll checks or payroll drafts returned unpaid because of
22 insufficient funds, if, after a diligent search, the holder is unable
23 to return the dishonored check or draft to the payee and recover
24 the sums paid out. Within 30 days of the filing of the complaint,
25 the Labor Commissioner shall notify the parties as to whether a
26 hearing will be held, whether action will be taken in accordance
27 with Section 98.3, or whether no further action will be taken on
28 the complaint. If the determination is made by the Labor
29 Commissioner to hold a hearing, the hearing shall be held within
30 90 days of the date of that determination. However, the Labor
31 Commissioner may postpone or grant additional time before setting
32 a hearing if the Labor Commissioner finds that it would lead to an
33 equitable and just resolution of the dispute. A party who has
34 received actual notice of a claim before the Labor Commissioner
35 shall, while the matter is before the Labor Commissioner, notify
36 the Labor Commissioner in writing of any change in that party's
37 business or personal address within 10 days after the change in
38 address occurs.

1 It is the intent of the Legislature that hearings held pursuant to
2 this section be conducted in an informal setting preserving the
3 rights of the parties.

4 (b) When a hearing is set, a copy of the complaint, which shall
5 include the amount of compensation requested, together with a
6 notice of time and place of the hearing, shall be served on all
7 parties, personally or by certified mail, or in the manner specified
8 in Section 415.20 of the Code of Civil Procedure.

9 (c) Within 10 days after service of the notice and the complaint,
10 a defendant may file an answer with the Labor Commissioner in
11 any form as the Labor Commissioner may prescribe, setting forth
12 the particulars in which the complaint is inaccurate or incomplete
13 and the facts upon which the defendant intends to rely.

14 (d) No pleading other than the complaint and answer of the
15 defendant or defendants shall be required. Both shall be in writing
16 and shall conform to the form and the rules of practice and
17 procedure adopted by the Labor Commissioner.

18 (e) Evidence on matters not pleaded in the answer shall be
19 allowed only on terms and conditions the Labor Commissioner
20 shall impose. In all these cases, the claimant shall be entitled to a
21 continuance for purposes of review of the new evidence.

22 (f) If the defendant fails to appear or answer within the time
23 allowed under this chapter, no default shall be taken against him
24 or her, but the Labor Commissioner shall hear the evidence offered
25 and shall issue an order, decision, or award in accordance with the
26 evidence. A defendant failing to appear or answer, or subsequently
27 contending to be aggrieved in any manner by want of notice of the
28 pendency of the proceedings, may apply to the Labor
29 Commissioner for relief in accordance with Section 473 of the
30 Code of Civil Procedure. The Labor Commissioner may afford
31 this relief. No right to relief, including the claim that the findings
32 or award of the Labor Commissioner or judgment entered thereon
33 are void upon their face, shall accrue to the defendant in any court
34 unless prior application is made to the Labor Commissioner in
35 accordance with this chapter.

36 (g) All hearings conducted pursuant to this chapter are governed
37 by the division and by the rules of practice and procedure adopted
38 by the Labor Commissioner.

39 (h) (1) Whenever a claim is filed under this chapter against a
40 person operating or doing business under a fictitious business

1 name, as defined in Section 17900 of the Business and Professions
2 Code, which relates to the person's business, the division shall
3 inquire at the time of the hearing whether the name of the person
4 is the legal name under which the business or person has been
5 licensed, registered, incorporated, or otherwise authorized to do
6 business.

7 (2) The division may amend an order, decision, or award to
8 conform to the legal name of the business or the person who is the
9 defendant to a wage claim, if it can be shown that proper service
10 was made on the defendant or his or her agent, unless a judgment
11 had been entered on the order, decision, or award pursuant to
12 subdivision (d) of Section 98.2. The Labor Commissioner may
13 apply to the clerk of the superior court to amend a judgment that
14 has been issued pursuant to a final order, decision, or award to
15 conform to the legal name of the defendant, if it can be shown that
16 proper service was made on the defendant or his or her agent.

17 *SEC. 4. Section 238 is added to the Labor Code, to read:*

18 *238. (a) If a final judgment against an employer arising from*
19 *the employer's nonpayment of wages for work performed in this*
20 *state remains unsatisfied after a period of 10 days after the time*
21 *to appeal therefrom has expired and no appeal therefrom is*
22 *pending, the employer shall not continue to conduct business in*
23 *this state related to that final judgment unless the employer has*
24 *obtained a bond from a surety company admitted to do business*
25 *in this state and has filed a copy of that bond with the Labor*
26 *Commissioner. The principal sum of the bond shall not be less*
27 *than one hundred and fifty thousand dollars (\$150,000).*

28 *(b) In lieu of filing and maintaining the bond required by this*
29 *section, the employer may provide the Labor Commissioner with*
30 *a notarized copy of an accord reached with an individual holding*
31 *an unsatisfied final judgment.*

32 *(c) (1) The bond required by this section shall be in favor of,*
33 *and payable to, the people of the State of California, and shall be*
34 *for the benefit of any employee damaged by his or her employer's*
35 *failure to pay wages, including any interest, penalties, and*
36 *attorney's fees.*

37 *(2) This section shall not require a bond in favor of employees*
38 *covered by a bona fide collective bargaining agreement, if the*
39 *agreement expressly provides for wages, hours of work, working*

1 conditions, a process to resolve disputes concerning nonpayment
2 of wages, and a waiver of the bond required by this section.

3 (3) Thirty days prior to the cancellation or termination of any
4 bond required by this section, the surety shall send written notice
5 to both the employer and the Labor Commissioner, identifying the
6 bond and the date of the cancellation or termination. If the bond
7 is terminated or canceled, the employer shall obtain a new surety
8 bond and file a copy of that bond with the Labor Commissioner
9 to remain in compliance with this section.

10 (d) For purposes of this section, a judgment also includes any
11 final arbitration award where the time to file a petition for a trial
12 de novo or a petition to vacate or correct the arbitration award
13 has expired and no petition is pending.

14 (e) Subject to written notice to a subsequent employer about
15 any unsatisfied judgments against the employer for nonpayment
16 of wages, a subsequent employer similar in operation and
17 ownership to an employer with an unsatisfied final judgment for
18 unpaid wages shall be deemed the same employer for purposes of
19 this section if (1) the employees of the subsequent employer are
20 engaged in substantially the same work in substantially the same
21 working conditions under substantially the same supervisors or
22 (2) if the new entity has substantially the same production process
23 or operations, produces substantially the same products or offers
24 substantially the same services, and has substantially the same
25 body of customers.

26 (f) Any employer, or other person acting on behalf of an
27 employer, that conducts business in violation of this section shall
28 be subject to a civil fine of two thousand five hundred dollars
29 (\$2,500). Any employer that has previously paid a fine pursuant
30 to this section shall be subject to an additional fine of one hundred
31 dollars (\$100) for each calendar day that the employer conducts
32 business in violation of this section; however, this additional
33 amount shall not exceed one hundred thousand dollars (\$100,000).

34 SEC. 5. Section 238.1 is added to the Labor Code, to read:

35 238.1. (a) Where an employer is conducting business in
36 violation of Section 238, the Labor Commissioner may issue and
37 serve on that employer a stop order prohibiting the use of employee
38 labor by that employer until the employer's compliance with
39 Section 238, provided that the stop order would not compromise
40 or imperil public safety or the life, health, and care of vulnerable

1 individuals. The stop order shall also prohibit the employer from
2 continuing to provide services by subcontracting for labor. The
3 stop order shall become effective immediately upon the service of
4 the order. Any employee affected by the work stoppage shall be
5 paid by the employer for such time lost, not exceeding 10 days,
6 pending compliance by the employer. The employer may protest
7 the stop order by making and filing with the Labor Commissioner
8 a written request for a hearing within 20 days after service of the
9 stop order. The hearing shall be held within 5 days from the date
10 of filing the request. The Labor Commissioner shall notify the
11 employer of the time and place of the hearing by mail. At the
12 conclusion of the hearing, the stop order shall be immediately
13 affirmed or dismissed, and within 24 hours thereafter, the Labor
14 Commissioner shall issue and serve on all parties to the hearing
15 by registered or certified mail a written notice of findings,
16 accompanied by written findings. A writ of mandate may be taken
17 from the findings to the appropriate superior court. The writ shall
18 be taken within 45 days after the mailing of the notice of findings
19 and findings.

20 (b) Failure of an employer, officer, or anyone having direction,
21 management, or control of any place of employment or of
22 employees to observe a stop order issued and served upon him or
23 her pursuant to this section is guilty of a misdemeanor punishable
24 by imprisonment in the county jail not exceeding 60 days or by a
25 fine not exceeding ten thousand dollars (\$10,000), or both. The
26 Labor Commissioner may also obtain injunctive and other relief
27 from the courts to carry out the purposes of this section.

28 SEC. 6. Section 238.2 is added to the Labor Code, to read:

29 238.2. (a) The Labor Commissioner may create a lien on any
30 real property in California of an employer that is conducting
31 business in violation of Section 238 for the full amount of any
32 wages, interest, penalties, and attorney's fees claimed to be owed
33 to any employee.

34 (b) The Labor Commissioner may create the lien provided in
35 this section by recording a certificate of lien using the same
36 procedure applicable under subsection (g) of Section 98.2.

37 (c) The Labor Commissioner shall issue a certificate of release,
38 releasing the lien created under this section, upon final satisfaction
39 of any judgment entered in favor of the employee, upon
40 adjudication of the claim in favor of the employer, upon the filing

1 of a surety bond pursuant to Section 238. The certificate of release
2 may be recorded by the employer at the employer's expense.

3 (d) Unless the lien is satisfied or released, a lien under this
4 section shall continue until 10 years from the date of its creation.

5 (e) Prior to using this lien procedure in this section, the Labor
6 Commissioner shall provide at least 20 days' preliminary notice
7 to the employer. The preliminary notice shall advise the employer
8 of the nature and amount of the employee's claim and of the Labor
9 Commissioner's authority to create a lien on the employer's
10 property to secure payment of the claim.

11 (f) The Labor Commissioner shall serve the preliminary notice
12 on the employer by certified mail with return receipt requested,
13 evidenced by a certificate of mailing, postage prepaid, addressed
14 to the employer at the employer's residence or place of business.
15 The Labor Commissioner shall serve a copy of any notice of lien
16 on the employer in the same manner.

17 (g) Upon entry of a final order, decision, or award issued in an
18 appeal pursuant to Section 98.2 against the employer for unpaid
19 wages, or entry of a final judgment against the employer for unpaid
20 wages in an action filed in the superior court, the Labor
21 Commissioner may bring an action to foreclose on any lien created
22 pursuant to this section.

23 (h) A lien created pursuant to this section is in addition to any
24 other lien rights available to an employee or to the Labor
25 Commissioner and shall not be construed to limit those rights.

26 SEC. 7. Section 238.3 is added to the Labor Code, to read:

27 238.3. (a) The Labor Commissioner may create a lien on any
28 personal property in California of an employer that conducts
29 business in violation of Section 238 for the full amount of any
30 wages, interest, penalties, and attorney's fees claimed to be owed
31 to any employee.

32 (b) The Labor Commissioner may create the lien provided in
33 this section by filing a notice of lien with the Secretary of State on
34 the standard form of initial financing statement pursuant to Section
35 9521 of the Commercial Code. The standard form shall be
36 completed in the following manner:

37 (1) The Labor Commissioner shall be identified as the secured
38 party.

39 (2) The employer shall be identified as the debtor.

1 (3) *The description of the collateral shall include the following*
2 *statements:*

3 (A) *A statement of the Labor Commissioner's demand for*
4 *payment of the wages, penalties, interest, and attorney's fees. The*
5 *statement shall specify the amount owed to the employee, and if*
6 *the amount is estimated, shall provide an explanation for the basis*
7 *of the estimate.*

8 (B) *A general statement of the kind of work furnished by the*
9 *employee and the dates of employment.*

10 (c) *For the purpose of the Secretary of State's index pursuant*
11 *to Sections 9515, 9516, and 9522 of the Commercial Code and for*
12 *the purpose of the issuance of a certificate pursuant to Section*
13 *9519 or 9528 of the Commercial Code, the Secretary of State shall*
14 *treat a notice of lien pursuant to this section as a financing*
15 *statement.*

16 (d) *The lien attaches to all personal property that is owned by*
17 *the employer at the time of the filing of the notice of lien, or that*
18 *is subsequently acquired by the employer, that can be made subject*
19 *to a security interest under the Commercial Code.*

20 (e) *The Labor Commissioner shall file a termination statement,*
21 *releasing the lien created under this section, upon final satisfaction*
22 *of any judgment entered in favor of the employee, upon*
23 *adjudication of the claim in favor of the employer, upon the filing*
24 *of a surety bond in a form acceptable to the Labor Commissioner*
25 *sufficient to secure the claim.*

26 (f) *The notice of claim of lien to which the termination statement*
27 *relates ceases to be effective upon the filing of a termination*
28 *statement with the office of the Secretary of State. A termination*
29 *statement for a notice of lien may be filed in the same manner as*
30 *a termination statement for a financing statement filed pursuant*
31 *to Section 9513 of the Commercial Code.*

32 (g) *Unless the lien is satisfied or released, a lien under this*
33 *section shall continue until 10 years from the date of its creation.*

34 (h) *Prior to using this lien procedure in this section, the Labor*
35 *Commissioner shall provide at least 20 days' preliminary notice*
36 *to the employer. The preliminary notice shall advise the employer*
37 *of the nature and amount of the employee's claim and of the Labor*
38 *Commissioner's authority to create a lien on the employer's*
39 *personal property to secure payment of the claim.*

1 (i) *The Labor Commissioner shall serve the preliminary notice*
2 *on the employer by certified mail with return receipt requested,*
3 *evidenced by a certificate of mailing, postage prepaid, addressed*
4 *to the employer at the employer's residence or place of business.*
5 *The Labor Commissioner shall serve a copy of any notice of lien*
6 *on the employer in the same manner.*

7 (j) *Upon entry of a final order, decision, or award issued in an*
8 *appeal pursuant to Section 98.2 against the employer for unpaid*
9 *wages, or entry of a final judgment against the employer for unpaid*
10 *wages in an action filed in the superior court, the Labor*
11 *Commissioner may bring an action to foreclose on any lien created*
12 *pursuant to this section.*

13 (k) *A lien created pursuant to this section in addition to any*
14 *other lien rights available to an employee or to the Labor*
15 *Commissioner shall not be construed to limit those rights.*

16 SEC. 8. *Section 238.4 is added to the Labor Code, to read:*

17 238.4. (a) *An employer in the long-term care industry that is*
18 *also required to obtain a license from the State Department of*
19 *Public Health or the State Department of Social Services pursuant*
20 *to Division 2 (commencing with Section 1200) of the Health and*
21 *Safety Code may not obtain a license or renew that license if the*
22 *employer is conducting business in violation of Section 238.*

23 (b) *For purposes of this section "long-term care" means the*
24 *operation of a skilled nursing facility, intermediate care facility,*
25 *congregate living facility, hospice facility, adult residential facility,*
26 *residential care facility for persons with chronic life-threatening*
27 *illness, residential care facility for the elderly, continuing care*
28 *retirement community, home health agency, or home care*
29 *organization, as those terms are used in Division 2 (commencing*
30 *with Section 1200) of the Health and Safety Code.*

31 SEC. 9. *Section 238.5 is added to the Labor Code, to read:*

32 238.5. (a) *An individual, partnership, corporation, limited*
33 *liability company, joint venture, or association that, as part of its*
34 *business, contracts with an employer to perform services in the*
35 *property services or long-term care industries shall be jointly and*
36 *severally liable, where the individual, partnership, corporation,*
37 *limited liability company, joint venture, or association has been*
38 *named as a defendant and provided notice pursuant to subdivision*
39 *(c), with the employer for any unpaid wages, including interest,*
40 *and the employer was found liable for those unpaid wages by an*

1 order, decision or award issued pursuant to Section 98.2, to the
2 extent the amounts are for services performed under that contract.
3 The issue of joint and several liability under this section may be
4 determined by the Labor Commissioner in a proceeding under
5 Section 98.

6 (b) The joint and several liability provided by this section shall
7 not apply to unpaid wages owed to employees covered by a bona
8 fide collective bargaining agreement, if the agreement expressly
9 provides for wages, hours of work, working conditions, a process
10 to resolve disputes concerning nonpayment of wages, and a waiver
11 of the joint and several liability provided by this section.

12 (c) An employer that contracts to provide services in the
13 property services or long-term care industries shall, prior to
14 entering into such a contract, provide written notice to the other
15 party to the prospective contract of any unsatisfied final judgments
16 against the employer for nonpayment of wages. The notice shall
17 also provide the text of this section. The employer shall provide,
18 within thirty (30) days of the entry of the judgment, written notice
19 of any unsatisfied final judgments against the employer for
20 nonpayment of wages to any parties with which the employer is
21 presently under contract to provide services in the property
22 services or long-term care industries. The failure of the employer
23 to provide such notices shall not be a defense to the joint and
24 several liability provided by this section.

25 (d) For purposes of this section:

26 (1) "Property services" means janitorial, security guard, valet
27 parking, landscaping and gardening services.

28 (2) "Long-term care" has the same definition as in Section
29 238.4.

30 SEC. 10. Section 558.1 is added to the Labor Code, to read:

31 558.1. Any person who would be liable for any violation under
32 Section 558 may also be held liable in an action pursuant to Section
33 98, 203, 226, 1193.6, 1194, or 2802.

34 SEC. 11. No reimbursement is required by this act pursuant
35 to Section 6 of Article XIII B of the California Constitution because
36 the only costs that may be incurred by a local agency or school
37 district will be incurred because this act creates a new crime or
38 infraction, eliminates a crime or infraction, or changes the penalty
39 for a crime or infraction, within the meaning of Section 17556 of
40 the Government Code, or changes the definition of a crime within

1 *the meaning of Section 6 of Article XIII B of the California*
2 *Constitution.*

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**All matter omitted in this version of the bill
appears in the bill as introduced in the
Senate, February. (JR11)**

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